IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4023 of 1991

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

CHANDRAVADAN K KINARIWALA

Versus

DIWALIBEN KANTILAL SHROFF

Appearance:

MR RR MARSHALL for Petitioner

MR JITENDRA M PATEL for Respondent Nos. 1, 2

MS MANISHA LAVKUMAR, AGP for Respondent No. 3

CORAM : MR.JUSTICE M.S.SHAH

Date of decision: 12/01/2001

ORAL JUDGEMENT

In this petition under Articles 226 and 227 of the Constitution, the heirs of late Chandravadan Kantilal Kinariwala have challenged the judgment and order dated 20.4.1991 passed by the State Government by which the Additional Chief Secretary, Revenue Department (Appeals)

of the State Government accepted the prayer of respondent Nos. 1 and 2 to review the order dated 4.2.1991 in revision application No. SRD/City Survey/22/99 on the ground that respondent Nos. 1 and 2 herein (applicants in the revision application) had sent a telegram for adjournment which was not considered and the matter was decided on merits in absence of respondent Nos. 1 and 2.

2. The petition was admitted on 21.6.1991 and ad-interim relief was granted staying execution and implementation of the aforesaid order dated 20.4.1991. The ad-interim relief was thereafter confirmed on 5.8.1991. The matter come has come up for final hearing now.

3. Ordinarily, this Court would not interfere with such an order. If the petition were to be dismissed, the parties would only get an opportunity of presenting their case before the revisional authority on merits. However, the following peculiar facts persuade the Court to interfere with the impugned order.

The dispute in question pertains to property bearing ward No. 7, City Survey No. 2712 situate in Saiyedpura, Surat. The dispute is between the relatives who are all heirs of Kantilal Shroff. The City Survey Superintendent, Surat had passed order dated 25.6.1987 holding that the name of Chandravadan Kantilal Kinariwala was required to be entered in the city survey record. The appeal preferred by respondent Nos. 1 and 2 herein was dismissed by the Deputy Collector, Surat on 31.8.1988. Further appeal was dismissed by the Collector on 12.10.1989 and the State Government dismissed the revision application against the said order on 4.2.1991. While dismissing the revision application, the State Government specifically observed that the dispute between the parties was civil in nature and could be agitated before the competent civil Court. The dispute about succession to property, whether by testamentary succession, by intestate succession or by partition, could certainly be agitated before a civil Court. Respondent Nos. 1 and 2, however, preferred review application on 12.3.1991 on the ground that their telegraphic request for adjournment was not considered and the Additional Chief Secretary acceded to the request for review.

4. Mr JM Patel, learned councel for the respondent Nos. 1 and 2, however, submits that the impugned order of the State Government is not an order for reveiwing the decision on merits but it is an order that the Government

is now prepared to offer another opportunity of hearing to respondent Nos. 1 and 2 herein.

5. It is pertinent to note that the impugned order of the Additional Chief Secretary does not purport to set aside the previous order dated 4.2.1991 of the State Government but proceeding on the basis that the Additional Chief Secretary could not have intended to fix fresh hearing without setting aside the order dated 4.2.1991, the Court has examined the grievance of the petitioner in that light.

6. It is not necessary to go into the question about the difference between the procedural review and substantive review. Even proceeding on the basis that the Government had the power of procedural review, the Court is inclined to interfere with the impugned order in view of the reasons mentioned hereinafter.

7. Considering the fact that the order in favour of the petitioner passed by the City Survey Superintendent as far back as on 25.6.1987 is holding the field since it was confirmed by the Deputy Collector as well as the Collector in appeals and by the State Government in revision and that the interim relief is operative in favour of the petitioners since last about 10 years and also considering the fact that by the order dated 4.2.1991 the State Government has not finally determined the rights of the parties and left it open to them to approach the Civil Court for adjudication of their rights pertaining to the property in question and that no useful purpose would be served by the revisional authority hearing the parties de novo on an issue which ought to be decided by the Civil Court (as dismissing the petition and confirming the order would only mean one more innings before the revisional authority on the issue which ought to be decided by the Civil Court in case the dispute between the parties yet survives), the Court considers this to be a fit case for setting aside the impugned order dated 20.4.1991 with liberty to either of the parties to approach the Competent Civil Court for adjudication of the dispute between the parties pertaining to the aforesaid property.

8. In view of the above discussion, the impugned order dated 20.4.1991 (Annexure "C") is set aside. Liberty is reserved to the parties to approach the Civil Court for adjudication of their disputes pertaining to property bearing ward No. 7, City Survey No. 2712 situate in Saiyedpura, Surat.

9. Rule is made absolute to the aforesaid extent with no order as to costs.

(M.S. Shah, J.)

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